

MAR 02 2010

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

**IN THE MATTER OF THE REQUEST
FOR AGENCY ACTION OF UTAH
DIVISION OF OIL, GAS AND MINING
FOR AN ORDER TERMINATING
NOTICE OF INTENTION OF TONY
AGUIAR d/b/a DIVERSIFIED STONE
PRODUCTS INC.; REQUIRING
IMMEDIATE RECLAMATION; AND
AUTHORIZING THE DIVISION TO
FILE SUIT TO RECOVER THE COSTS
OF RECLAMATION OF THE WONDER 2
MINE S410025, W1/2, NE QUARTER,
SEC. 23, TOWNSHIP 26 SOUTH, RANGE
4 WEST, SLB&M, SEVIER COUNTY,
UTAH.**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER**

Docket No. 2009-017

Cause No. S410025

This matter came on regularly for hearing before the Utah Board of Oil, Gas and Mining (“Board”) on Wednesday, December 9, 2009, at the hour of 9:00 a.m., in the Hearing Room of the Utah Department of Natural Resources at 1594 West North Temple Street, in Salt Lake City, Utah. The following Board members were present and participated at the hearing: Chairman Douglas E. Johnson, Jean Semborski, Jake Y. Harouny, Kelly L. Payne, Ruland J. Gill, Jr., and James T. Jensen. Samuel C. Quigley was not present and did not participate. The Board was represented at the hearing by Michael S. Johnson, Assistant Attorney General.

The Petitioner, Division of Oil, Gas and Mining, was represented by Fredric J. Donaldson, Assistant Attorney General. No representative of Respondent Diversified Stone Products, Inc. (“DSP”) was present. Mr. Tony Aguiar was not present. Mr. Lynn Kunzler from the Division of Oil,

Gas and Mining, and Mr. Michael Jackson of the Bureau of Land Management, provided testimony in support of the Division's requested action. The Board heard the entire matter on the day of the hearing and ruled after deliberating.

The Division petitioned the Board for an order: (1) confirming the Division withdrawal of the Notice of Intention for the Wonder 2 mine located in the W1/2NE 1/4 of Section 23, T. 26 S., R. 4 W., SLBM, Sevier County, Utah; (2) ordering that Tony Aguiar d/b/a Diversified Stone Products, Inc. ("DSP") immediately commence reclamation of the mine site, and providing that if he fails to timely proceed with the reclamation and complete the reclamation work as required by the applicable regulations that the Division and/or the United States Bureau of Land Management ("BLM") may proceed to complete the reclamation work and recover its costs against him; and (3) authorizing the Division to file suit and prosecute such further civil actions as may be necessary to recover all costs associated with the reclamation of the Wonder 2 mine S410025 together with all costs and attorney fees associated therewith.

The Board, having fully considered the testimony adduced and exhibits received into evidence at the December 9, 2009 hearing, being fully advised, and good cause appearing, hereby makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Notices of the time, place, and purpose of the December 9, 2009 hearing were mailed to all interested parties, and were duly published in newspapers of general circulation pursuant to the requirements of Utah Administrative Code ("U.A.C.") Rule R641-106-100 (2005). Copies of the Request for Agency Action were likewise mailed to all interested parties pursuant to U.A.C. Rule R641-104-135.

2. On October 10, 1996, the Division received a Notice of Plan of Operations (“Notice of Intention,” or “NOI”) to conduct mining operations at the Wonder 2 mine located in the W1/2NE1/4 of Section 23, T. 26 S., R. 4 W., SLBM, Sevier County, Utah on behalf of Diversified Stone Products, Inc.

3. The NOI indicated that all areas affected by the mining would be recontoured to blend into the surrounding area.

4. The mine site was inspected on October 15, 1996 at which time Mr. Lynn Kunzler, the Division inspector, noted less than one-half acre of disturbance.

5. Mining operations occurred prior to the filing of the NOI under the name of Diversified Stone Products, Inc. An annual report for the year 1995 was filed by Steven LaMar Sorenson who signed as President. Sorenson also filed a report in 1996 indicating the mine was active and further mining was planned for 1997.

6. In 1997, an annual report was submitted by Tony Aguiar, as President of DSP indicating there had been mining during the current year and that mining was planned for the following year. A similar report was submitted and signed by Tony Aguiar as President of DSP for the years 1998, 1999, 2000, 2001, 2002, and 2003.

7. On June 21, 2002 the BLM notified Mr. Aguiar that new regulations effective January 20, 2001 required that a reclamation surety be provided for the mine and that he was required to provide a cost estimate for reclamation.

8. On August 4, 2003, the BLM informed Mr. Aguiar that the amount of surety required was \$24,900.00 and that he had 30 days to appeal. No appeal was filed.

9. On November 7, 2003, a BLM decision was issued finalizing the determination that a surety of \$24,900 was required for the mining conducted pursuant to the Notice of Intention and that an acceptable surety in this amount was to be provided within 60 days.

10. On June 21, 2004, another BLM decision was issued requiring either that all mining immediately cease and that the operator begin reclamation of the mine site, or that a new Notice of Intention be filed with the required bond.

11. On August 10, 2004, a Notice was sent by the Division to Aguiar suspending mining operations for failure to pay the annual permit fee of \$150.

12. An annual report for 2004 was submitted by Tony Aguiar, President of DSP, on January 2005, indicating there had been mining during the year and that mining was planned for the following year.

13. The annual report submitted for 2005 indicated that no mining had occurred during the year. No further annual reports have been filed.

14. On September 28, 2006, the BLM ordered the mine reclaimed. In 2007, the Division concurred with the BLM that reclamation was required. The Division issued a Cessation Order on June 21, 2007, for failure to reclaim and for the failure to pay the annual permit fees then owing of \$450.00.

15. A notice from the BLM dated December 11, 2007 indicated that good faith efforts had been made to reclaim the mine but that re-contouring and backfilling work remained to be done.

16. The site was inspected on April 29, 2008 by Lynn Kunzler from the Division and by Michael Jackson from the BLM. Mr. Kunzler reported that more reclamation work was necessary.

Mr. Jackson also indicated that further reclamation work was required to bring the site into performance compliance.

17. On September 9, 2008, the operator was given until October 31, 2008 to complete the reclamation and to make the payments at which time the Division would vacate pending fines, and if reclamation was not completed by that date, the Division would proceed to assess a Failure to Abate Cessation Order with penalties of \$750 per day.

18. On November 19, 2008, a Notice was issued and sent by certified mail advising Mr. Aguiar d/b/a Diversified Stone Products that the NOI was being withdrawn for failure to provide a reclamation surety, failure to pay fees and failure to reclaim the site. Mr. Aguiar was advised that the Division's action was subject to the right to appeal the decision to the Board. No appeal was filed.

19. On February 4, 2009 the BLM advised the operator that reclamation was still required and that the BLM could proceed to reclaim the site and seek reimbursement for those costs.

20. The testimony and evidence submitted at the December 9, 2009 hearing supported the Division's Request for Agency Action. As of the date of the hearing, mining activity at the Wonder 2 mine had ceased and reclamation had not been fully completed.

21. The Board voted unanimously to approve the Request for Agency Action with the condition that an agreement providing that reclamation costs incurred by the Division be reimbursed by the BLM if the Division is unable to recover the costs from Diversified Stone Products be entered into prior to the Division's expenditure of funds for reclamation.

CONCLUSIONS OF LAW

22. Due and regular notice of the time, place, and purpose of the Board's December 9, 2009 hearing was given to all appropriate parties in the form and manner and within the time required by law and the rules and regulations of the Board. Due and regular notice of the filing of the Request for Agency Action was given to all interested parties in the form and manner and within the time required by law and the rules and regulations of the Board.

23. The Board has jurisdiction over the parties and the subject matter of the Request for Agency Action.

24. The Wonder 2 mine is inactive and reclamation has been properly ordered.

25. The required reclamation has not been satisfactorily completed at the Wonder 2 mining site. All areas affected by mining at the site have not been recontoured to blend into the surrounding area.

26. The unreclaimed mine poses no immediate hazard or threat to public safety.

27. The Division has met its burden of proof, demonstrated good cause, and satisfied all legal requirements for the granting of the requested action.

ORDER

Based upon the Request, the testimony and evidence submitted and entered at the December 9, 2009 hearing and the findings of fact and conclusions of law stated above, it is hereby ordered that:

A. The withdrawal of the Notice of Intention of the Wonder 2 mine is confirmed and all rights associated with that Notice are terminated.

B. Diversified Stone Products, Inc. must immediately commence and complete reclamation of the mine area disturbed by the operator.

C. If Diversified Stone Products, Inc. fails to timely proceed and complete the reclamation work as required by applicable regulations to the satisfaction of the Division, the Division or BLM may proceed to complete the reclamation work and recover the costs associated therewith from Diversified Stone Products, Inc.

D. The Division may file suit and prosecute further civil actions, if necessary, to recover all costs associated with the reclamation of the Wonder 2 mine, together with all costs and attorney fees associated therewith.

E. The Division may only reclaim the site using its funds if it first enters into a written agreement with the BLM providing that the BLM will reimburse the Division for any and all reclamation costs expended by the state in the absence of the recovery of reclamation costs from Diversified Stone Products, Inc.

F. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63G-4-204 through 208, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641.

G. This Findings of Fact, Conclusions of Law, and Order (“**Order**”) is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board’s decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63G-4-208, and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109; and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

H. Notice of Right of Judicial Review by the Supreme Court of the State of Utah.

As required by Utah Code Ann. §63G-4-208(e) through (g), the Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this Order is entered. Utah Code Ann. §63G-4-401(3)(a) and 403.

I. Notice of Right to Petition for Reconsideration. As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this Order. Utah Code Ann. § 63G-4-302, entitled “Agency Review – Reconsideration,” states:

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id.

The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled “Rehearing and Modification of Existing Orders” state:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month

following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

Utah Admin. Code R641-110-100.

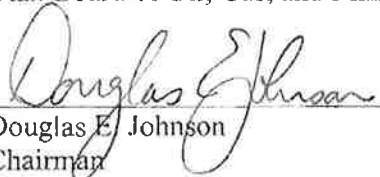
K. See Utah Administrative Code R641-110-200 for the required contents of a petition for rehearing. The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

L. The Board retains continuing jurisdiction over all the parties and over the subject matter of this Cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this Order by the Utah Supreme Court.

M. The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

DATED this 2 day of March 2010.

Utah Board of Oil, Gas, and Mining



Douglas E. Johnson
Chairman

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, to be mailed by first class mail, postage prepaid, the 3rd day of March, 2010 to:

Tony Aguiar, and
Diversified Stone Products, Inc.
P. O. Box 265
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Wayne A. Wetzel, Associate Field Manager
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